REMARKS

The Assignee respectfully requests reconsideration and entry of the following amendment and remarks in response to the office communication mailed June 4, 2009 and in response to the Office Action dated December 24, 2008. The Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1-28 and 31-37 are pending in this application. Claims 29-30 and 38-50 were previously canceled without prejudice or disclaimer.

Response to June 4, 2009 Communication

The Office mailed a communication on June 4, 2009. This Office communication denied entry of an amendment that was electronically submitted March 23, 2009 in response to the Office Action dated December 24, 2008. The Office communication explains that the March 23, 2009 amendment "describes an embodiment that does not appear to be enabled in the specification of the present application." More specifically, it appears that the Office objects to the claimed features for receiving and merging "clickstream data."

The Assignee, very respectfully, disagrees. The claimed features for "clickstream data" are fully enabled embodiments of this application. Consider, for example, paragraph [0039] of U.S. Application 10/037,005, which is reproduced below, that explains how "clickstream" data is used to determine a subscriber's content choices:

> [0039]   The systems and methods of the present invention may be advantageously implemented with the systems and methods disclosed in U.S. Application 10/017,742, filed by Matz et al. on December 14, 2001, entitled "System and Method for Utilizing Television Viewing Patterns," (Attorney Docket No. 36968-265386 (BS01341)) which is incorporated herein by reference. Under embodiments disclosed therein, a subscriber's television viewing patterns are combined with programming and advertising media-content detail to determine the subscriber's content choices.

Paragraphs [0018] and [0019] of U.S. Application 10/017,742 explains how "clickstream data" is used to determine a subscriber's content-choice information:

> [0018]   The present invention provides systems and methods for effectively and efficiently receiving, analyzing, and utilizing subscriber content-choice information. In an embodiment of the present invention, **a merge processor combines subscriber-action and media-content detail to create a subscriber content-choice database**. The resultant database provides a wealth of information regarding a subscriber's content-access patterns, including genre and time-of-day preferences as well as duration-of-access patterns.
>
> [0019]   The media-content database may include television, radio, Internet, and other programming and/or advertising data. The subscriber-action database includes actions a subscriber takes to access media content. **For example, in one embodiment of the present invention, the subscriber-action database comprises a clickstream database. A clickstream database is common in Internet monitoring applications and similar databases have been described for tracking television subscriber actions.   The clickstream database tracks individual subscriber actions, such as clicking a hyperlink on a web page or pushing a button on a television remote control**.

The Office should now realize that the use of "clickstream data" is a fully enabled embodiment of this application. The amendments described above should be entered and fully considered.

Amendments to the Specification

This resubmitted response again inserts new paragraphs [0074A] though [0074W]. Support for these paragraphs may be found in U.S. Application 09/496,825 to Grauch, *et al.*, which is incorporated by reference.

Objection to Claim 1

The Office objected to claim 1 for antecedent basis. Claim 1 has been amended, so the Office is respectfully requested to re-examine claim 1 in its current presentation.

Rejection under § 112

The Office rejected claims 1-28 and 31-37 under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. The Office, in particular, asserts that some claimed features are not supported by the application. The independent claims have been amended, so the Office is respectfully requested to re-examine the independent claims in their current presentation.

Rejection of Claim 36 under § 101

Claim 36 was rejected under 35 U.S.C. § 101 for allegedly claiming non-statutory subject matter. Claim 36 has been amended, so the Office is respectfully requested to re-examine claim 36 in its current presentation.

Rejection of Claims under § 103 (a)

The Office rejects claims 1-8, 10-22, 24-28, and 31-36 under 35 U.S.C. § 103 (a) as being obvious over Published U.S. Patent Application 2003/0172374 to Vinson, *et al.* in view of WO 98/31114 to Grauch, *et al.*

These claims, however, are not obvious over the combined teaching of *Vinson* with *Grauch*. These claims recite, or incorporate, features that are not taught or suggested by *Vinson* with *Grauch*. Independent claim 1, for example, recites *"calculating a probability that the at least one subscriber will continue to view content that follows at least one of a category of content and a genre of content."* Support may be found at least at paragraph [0028] of the as-filed application. Independent claims 15 and 36 recite similar features.

Vinson with *Grauch* do not obviate all these features. *Vinson* describes a database that stores set-top box events. *See* Published U.S. Patent Application 2003/0172374 to Vinson at paragraph [0027]. Each set-top box's viewing habits may be correlated to demographic data, news, weather, and sales. *See id.* at paragraphs [0032] and [0033]. A "Data Center" may store

the collected data. *See id.* at paragraph [0087]. Users may query the data center and extract "meaningful" information. *See id.* at paragraph [0088]. *Grauch* collects events and generates timelines. *See* U.S. Application 09/496,825 at column 2, lines 40-60. Even so, the combined teaching of *Vinson* with *Grauch* fails to teach or suggest obviate "*calculating a probability that the at least one subscriber will continue to view content that follows at least one of a category of content and a genre of content,*" as the independent claims recite. One of ordinary skill in the art, then, would not think that independent claims 1, 15, and 36 are obvious.

Independent claims 15 and 36 recite even more distinguishing features. These claims, for example, recite "*calculating another probability that the at least one subscriber will terminate an advertisement based on a consistency of the genre of content presented in a multiple program sequence over a specified time interval at least one of preceding and subsequent to the advertisement.*" Support may be found at least at paragraph [0031] of the as-filed application. Because both *Vinson* and *Grauch* are silent to these additional features, one of ordinary skill in the art would not think that independent claims 15 and 36 are obvious.

Claims 1-8, 10-22, 24-28, and 31-36, then, are not obvious over *Vinson* with *Grauch*. Independent claims 1, 15, and 36 recite many features that are not taught or suggested by *Vinson* with *Grauch*. The dependent claims incorporate these same features and recite additional features. Claims 1-8, 10-22, 24-28, and 31-36, then, are not obvious, so the Office is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claims 9, 23 & 37 under § 103 (a)

The Office also rejected claims 9, 23, and 37 under 35 U.S.C. § 103 (a) as being obvious over *Vinson* with *Grauch* in view of Published U.S. Patent Application 2002/0123928 to Eldering, *et al.*

Claims 9, 23, and 37, though, cannot be obvious over *Vinson, Grauch,* and *Eldering.* These claims depend, respectively, from independent claims 1, 15, and 36 and, thus, incorporate

the same distinguishing features. As the above paragraphs explained, both *Vinson* and *Grauch* fail to teach or suggest all the features of independent claims 1, 15, and 36, and *Eldering* does not cure these deficiencies. The Office asserts that *Eldering* discloses storing profile data as XML files. Whether or not this assertion is true, the proposed combination of *Vinson*, *Grauch*, and *Eldering* still fails to teach or suggest all the features of independent claims 1, 15, and 36, from which claims 9, 23, and 37 depend. One of ordinary skill in the art, then, would not think that claims 9, 23, and 37 are obvious. The Office is respectfully requested to remove the § 103 (a) rejection of these claims.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or *scott@scottzimmerman.com*.

Respectfully submitted,

Scott P. Zimmerman
Attorney for the Assignee
Reg. No. 41,390